

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation Into Statements
by SBC Communications and SBC Pacific Bell
Regarding Potential Reductions to Service
Quality.

Investigation 02-11-008

**RULING OF ASSIGNED COMMISSIONER
ON MOTION TO RECONSIDER SCOPING MEMO**

I. Background and Summary

On June 5, 2003 SBC California Inc. ("SBC") filed a document entitled "SBC California's (U 1001 C) Appeal to the Full Commission of an Assigned Commissioner's Ruling That Establishes New Service Standards for SBC California in Violation of the Public Utilities Code and Request for Stay." The document was filed in response to the Scoping Memorandum dated April 10, 2003.¹ Pursuant to Rule 3(e) and with the consent of SBC, the Docket Office re-titled the document "SBC California's (U 1001 C) Motion to the Full Commission to Reconsider an Assigned Commissioner's Ruling That Establishes New Service Standards For SBC California in Violation of the Public Utilities Code and Request for Stay." On June 6, 2003, SBC gave email notice of the changed title to the service list in this proceeding, as required by the Rule.

¹ *SBC California's (U 1001 C) Appeal to the Full Commission of an Assigned Commissioner's Ruling that Establishes New Service Standards for SBC California in Violation of the Public Utilities Code, and Request for Stay.*

Based on the arguments discussed in Section II, below, SBC's motion requests that the Scoping Memo be vacated and the proceeding closed.

On June 9, 2003, SBC California's affiliate, SBC Advanced Solutions, Inc. ("ASI") filed a document also entitled an appeal of the Assigned Commissioner's ruling that the Docket Office, pursuant to Rule 3(e) and with the consent of ASI, subsequently re-titled a motion to reconsider.² On June 10, 2003, ASI gave the required notice of the title change to the service list. ASI's motion includes the renewal of its motion³ filed March 7, 2003 to be dismissed from this proceeding.

On June 20, 2003 the Office of Ratepayer Advocates (ORA) and The Utility Reform Network (TURN) filed a joint response to SBC's motion.⁴ On June 24, ORA and TURN filed a joint response to the ASI motion.⁵ On June 30, 2003, with the permission of the assigned Administrative Law Judge (ALJ), SBC filed its reply to the TURN-ORA response.⁶

For reasons discussed below, this Ruling denies SBC's motion to vacate the Scoping Memo and close the proceeding; grants ASI's motion to be dismissed

² *Appeal to the Full Commission of the Scoping Memo and Ruling of Assigned Commissioner Wood.*

³ *Motion to Dismiss SBC Advanced Solutions, Inc. (U-6346-C) as a Respondent.*

⁴ *Response of the Office of Ratepayer Advocates and The Utility Reform Network to SBC California's (U 1001 C) Motion to the Full Commission to Reconsider An Assigned Commissioner's Ruling and Request for Stay.*

⁵ *Response of the Office of Ratepayer Advocates and the Utility Reform Network to SBC Advanced Solutions, Inc. (U 6346 C) Motion to the Full Commission to Reconsider the Scoping Memo and Ruling of Assigned Commissioner Wood.*

⁶ *SBC California's (U 1001 C) Reply I support of Motion to the Full Commission to Reconsider an Assigned Commissioner's Ruling that Establishes New Service Standards for SBC California in Violation of the Public Utilities Code, and Request for Stay.*

from the proceeding; and grants certain of SBC's specific requests for changes in the scope of the proceeding.

II. Discussion

SBC makes various arguments to support its motion to reconsider, but the fundamental allegation of its moving papers is that I exceeded my authority in the Scoping Memo by allegedly imposing new standards for service quality above and beyond those established by the Commission in General Order 133-B. The Commission's power to investigate and regulate the utilities subject to its jurisdiction is broad, as are the obligations of the regulated utilities. In particular, Section 451 of the Public Utilities Code obligates every public utility to "furnish and maintain such adequate, efficient, just and reasonable service...as [is] necessary to promote the safety, health, comfort and convenience of its patrons, employees, and the public." Section 701 of the Public Utilities Code authorizes the Commission to regulate all public utilities in this state and "to do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction."⁷

Section 702 of the Public Utilities Code obligates every regulated utility to "obey and comply with every order, decision, direction or rule made or prescribed" by the Commission. So long as an assigned Commissioner's

⁷ Both cited sections of the Public Utilities Code are broadly construed by the courts. *San Diego Gas & Electric Co. v. Superior Court* (1996) 55 Cal. Rptr. 2d 724, 13 Cal 4th 893, *Lobby Against Monopolies v. Public Utilities Commission* (1979) 160 Cal. Rptr. 124, 25 Cal 3d 891. The Commission is a constitutional body with broad legislative and judicial powers and may exercise equitable jurisdiction as an incident to its express duties and authorities. *Wise v. Pacific Gas & Electric Co.* 91 Cal. Rptr. 2d, 479, 77 Cal. App. 4th 287, rehearing denied, review denied.

scoping memo is carrying out the intent of the underlying Commission order, §702 requires the utility to comply.

The Commission's unanimously-adopted Order instituting this investigation broadly authorized an examination of:

“whether SBC's announced cutbacks ***will have any adverse effects on service quality*** or on Pacific's other obligations as a regulated telecommunications carrier. Based on our findings, ***we will take the necessary steps to insure that service quality is not degraded*** and that Pacific is able to meet its regulatory obligations.” (Emphasis supplied.)

The Order was even more specific in its statements of purpose:

“The purpose of this proceeding is to determine the impact of the announced cutbacks on the ability of Pacific and ASI to serve their retail and wholesale customers... [and to] assess whether the cutbacks are likely to lead to diminished service quality in California in either the short - or long-term... (Emphasis supplied.)

Finally, Ordering Paragraph No. 1 made plain that the Commission would exercise its jurisdiction to remedy any problems caused by the layoffs:

“An investigation is instituted on the Commission's own motion for the purpose of (a) assessing the impact of the announced cutbacks on the ability of SBC Pacific Bell (Pacific) and SBC Advanced Solutions, Inc. (ASI) to serve their retail and wholesale customers and otherwise meet their regulatory obligations and ***(b) based on such assessments, taking any steps the Commission may find to be necessary.***” (Emphasis supplied.)

These quotations from the Public Utilities Code and the Order establish beyond any doubt that degradation of service quality as a result of the layoffs is a subject within the Commission's jurisdiction and that the Commission has power to order SBC to restore prior service levels if there is a finding that the layoffs have degraded service quality. Nowhere in the Order does the Commission base

its actions on SBC's compliance with the minimum service standards established in General Order (GO) 133B. To the contrary, the Commission's exclusive concern in the Order is with a decline in service standards below those in effect prior to the layoffs, regardless of whether pre-layoff service met or exceeded the GO-133B standards.⁸

The core of SBC's argument is that requiring SBC to restore degraded service to its pre-layoff level is "setting a new service standard" above and beyond the standard set by GO133-B. But the standard to which service is to be restored is one set by SBC itself, namely, the standard of service that SBC was delivering prior to the layoffs and that it has repeatedly claimed would not be reduced by the layoffs. In stating that it might require SBC to restore service to its pre-layoff level, the Commission is doing no more than holding SBC to its

⁸ SBC conceded as much during the Prehearing Conference (PHC). In colloquy with assigned ALJ Karl Bemesserfer, SBC's attorney Jim Young twice recognized the Commission's authority to order a restoration of pre-layoff service quality:

ALJ Bemesserfer: Let me give you a hypothetical and tell me what your response would be. Let's assume that service quality could be rated on a scale from one to a hundred, where one is the worst and a hundred is the best. Prior to the layoffs Pacific was delivering service at the 80 level. Post layoffs it is delivering service at the 40 level and that the GO-133B level is 20. Is it your position that the Commission cannot take any steps to require you to raise that 40 back to 80?

Mr. Young: ***I don't think that would be our position***, but we could argue that position I think...

ALJ Bemesserfer: But you're not contending that the Commission doesn't have the power under 451 to ask you to raise your standards on that hypothetical?

Mr. Young: ***I think you do probably...***

(PHC Transcript, pp. 11-12, emphasis supplied.)

word regarding the lack of effect of the layoffs on service quality, something SBC urged it to do at the PHC.⁹ In short, the contention that the Scoping Memo exceeded the authority of an Assigned Commissioner is without merit when measured against the sweeping grants of regulatory authority in Public Utility Code §§ 451, 701 and 702 and the actual language of the Order. Accordingly, the motion to vacate the proceeding is denied.

SBC makes a number of specific requests for reconsideration of portions of the Scoping Memorandum in addition to its motion to vacate the proceeding. First, SBC objects to the use of any performance measures other than those contained in GO-133B. In doing so, SBC confuses minimum standards of performance with objective measures of performance and meeting a standard with maintaining a level of performance. The GO-133B standards set a floor under service quality. SBC would have us view them as setting a ceiling and, more to the point, rule out the use of any other criteria for assessing service quality. Other measurements of service quality, such as MCOT and JPSA¹⁰

⁹ ALJ Bemserderfer: My question is, how do you relate these reiterated promises to keep service quality where it is with the argument that the only relevant issue is whether services quality falls below the published minimum standards which you have made? Isn't there an inconsistency between promising to keep service standards where they are and claiming it would be inappropriate for the Commission in this proceeding to require you to maintain service quality at the prior levels? Isn't the Commission entitled to take SBC at its word?

Mr. Young: ***It certainly is entitled to take SBC at its word. I hope it does so.***
(PHC Transcript, p. 8. Emphasis supplied.)

¹⁰ "JPSA measures" refers to the performance measures adopted in the Joint Partial Settlement Agreement ("JPSA") approved in D.01-05-087 dated May 24, 2001. SBC, through its Pacific Bell operating subsidiary, was a party to the JPSA. The JPSA was

Footnote continued on next page

measures, provide a useful additional mechanism for assessing changes in service quality. They do not replace the GO-133B measures, but supplement and place them in a more meaningful context.

At the conclusion the Workshop, ALJ Bemisderfer asked the participants to file suggested rulings specifying which additional measures, if any, should be used to assess pre- and post-layoff service quality. In addition to opposition to the use of other measures filed by SBC and ASI, responses were received from ORA, TURN, and ATT. After consideration of the responses, I direct that the specific additional measures of service quality set out in Appendix A to this ruling be used to assess pre- and post-layoff service quality.

SBC and ASI filed meritorious comments on specific portions of the Scoping Memo. In response to those comments:

- The baseline period will run from January 1, 2002 to December 31, 2002 and the test period from January 1, 2003 to December 31, 2003. Evidentiary

entered into by SBC and the other settling parties as a way of achieving the objectives of Investigation 97-10-097 which the Commission summarized as:

- a. to determine reasonable standards of performance for Pacific and Verizon in their Operating Support Systems ("OSS");
- b. to develop a mechanism that will the Commission to monitor improvements in the performance of OSS; and
- c. to assess the best and fastest method of insuring compliance if standards are not met or improvement is not shown.

According to the settling parties, the JPSA measures "represent their best efforts to ensure that OSS performance measurements and standards reflect the requirements of the real world." The present investigation is likewise concerned with establishing the real world consequences of SBC's layoffs on service quality. As SBC itself recognized at the time of entering the JPSA, these measures shed valuable light on performance that is not necessarily revealed by GO133-B measures.

hearings will be scheduled for the second quarter of 2004.

- Discovery will commence immediately and end March 30, 2004. (The establishment of a formal discovery timetable does not, of course, prevent Commission staff from requesting any data from SBC at any time.)
- ASI will be dismissed from the proceeding. The layoffs at ASI were few in number and involved only administrative personnel rather than people providing or directing customer service. While it is possible to construct scenarios in which the layoff of a handful of management personnel not involved with providing customer service has a direct and measurable effect on service quality, it seems highly unlikely, both from the small number of persons involved and their titles, that laying them off could have any measurable effect on service quality.

IT IS RULED that:

1. The motion of SBC California to dismiss the investigation and vacate the Order is denied.
2. The motion of SBC Advanced Solutions, Inc. to be dismissed from the proceeding is granted.
3. Section IV, Paragraph 2 of the Scoping Memo is amended to read as follows:

“To make this determination, Respondents’ quality of service to their wholesale and retail customers will be assessed for the period beginning January 1, 2002 and ending December 31, 2002 (Baseline Period). Service quality for the Baseline Period will then be compared with service quality from January 1, 2003 through December 31, 2003 (Test Period).”

4. Section IV, Paragraph 3 of the Scoping Memo is modified to include the following language at the conclusion of the table of service quality measures:

“SBC’s service quality shall also be measured by reference to data contained in those of SBC’s JPSA filings for the Base Period and Test Period set out in Appendix A hereto.”

5. The Scoping Memo is further modified to include Appendix A to this ruling, which shall appear as Appendix A to the revised Scoping Memo.

6. Objections to the use of specific data shall be made by motion to the assigned Administrative Law Judge or the Law and Motion Judge.

7. Discovery will commence immediately and conclude March 30, 2004.

Dated August 12, 2003, at San Francisco, California.

/s/ Carl W. Wood

Carl W. Wood
Assigned Commissioner

Appendix A

The following JPSA Retail Measures will be used in this proceeding.¹¹

1. Average Completed Intervals (JPSA Measure 7)
2. Percent Due Dates Missed (JPSA Measure 11)
3. Held Order Interval (JPSA Measure 14)
4. Percentage Troubles in 10 Days for Non-Special (POTS) Orders (JPSA Measure 17)
5. Customer Trouble Report Rates (JPSA Measure 19)
6. Percent of Customer Trouble not Resolved within Estimated Time (JPSA Measure 20)
7. Average Time to Restore (JPSA Measure 21)
8. POTS Out of Service Less Than 24 Hours (Percent) (JPSA Measure 22)
9. Frequency of Repeat Troubles Within 30 Days (JPSA Measure 23)

(END OF APPENDIX A)

¹¹ The selected measures are specifically related to evaluating SBC's service quality performance to residence and business non-special orders. Each of the identified JPSA Retail Measures has one or more of the three following attributes:

1. It is a complement to a measure named in the Scoping Memo.
2. It separates external activities such as fieldwork from central or local office activities.
3. It is directly related to service quality performance that could be impacted by the force reductions.

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Ruling of Assigned Commissioner on Motion to Reconsider Scoping Memo on all parties of record in this proceeding or their attorneys of record.

Dated August 12, 2003, at San Francisco, California.

/s/ Antonina V. Swansen

Antonina V. Swansen

N O T I C E

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